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Federal Communications Commission
Washington, D.C. 20554

DISPATCHED

In the Matter of)	
)	
Federal-State Joint Board on Universal)	
Service)	CC Docket No. 96-45
)	
Qwest Corporation)	
)	
Petition for Waiver of Section 36.611 of the)	
Commission's Rules and Regulations)	

ORDER**Adopted: September 4, 2003****Released: September 5, 2003**

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant a request from Qwest Corporation (Qwest) for a waiver of the July 31, 2003 loop cost data filing deadline set forth in section 36.611 of the Commission's rules.¹ In particular, we permit Qwest to file these data on the same date it submits its 2002 Automated Reporting Management Information System (ARMIS) filings to the Commission. Until Qwest files its 2002 loop cost data, we direct the National Exchange Carrier Association (NECA) to continue using Qwest's loop cost data from 2001 when determining the national average loop cost and study area expense adjustments for support distributed in 2004.

II. BACKGROUND

2. In accordance with section 36.611 of the Commission's rules, on July 31 of each year, incumbent local exchange carriers (LECs) file with NECA the preceding year's loop-cost data for each study area.² Loop cost data include information concerning an incumbent LEC's plant, operating and maintenance costs, and depreciation expenses.³ Incumbent LECs are also required to include with their loop cost data the number of working loops in their study areas and, if applicable, the number of wire centers or disaggregation zones within wire centers.⁴ Pursuant to section 36.613 of the Commission's rules, NECA uses these data to calculate, among other things, the national average loop cost and each study area's expense adjustment.⁵ NECA submits its calculations to the Universal Service Administrative

¹ See Letter from R. William Johnston, Executive Director – Federal Regulatory Policy, Qwest, to Eric Einhorn, Chief, Telecommunications Access Policy Division, Federal Communications Commission, dated July 29, 2003 (Qwest Petition); see also 47 C.F.R. § 36.611.

² 47 C.F.R. § 36.611. Generally, but not always, a study area corresponds to an incumbent local exchange carrier's entire service area within a state. See 47 C.F.R. Part 36 App. (definition of "study area").

³ See 47 C.F.R. § 36.611.

⁴ See 47 C.F.R. § 36.611(h).

⁵ 47 C.F.R. § 36.613.

Company (USAC) on October 1 of each year.⁶ Once NECA files these data with the Commission and USAC, they become available to the public.⁷ USAC uses NECA's October 1 filing to submit to the Commission, sixty days prior to the start of each quarter, high-cost loop support and interim hold harmless fund size and associated administrative cost projections.⁸ The Commission then uses this and other data filed by USAC to determine the total amount of contributions that will be required to fund the universal service mechanisms in the upcoming quarter.⁹

3. Qwest's Communications Petition for Waiver. On July 29, 2003, Qwest filed a request for waiver and extension of time of the July 31, 2003 filing deadline for loop cost data set forth in section 36.611.¹⁰ Qwest contends that good cause exists for granting its requests because it is unable to prepare its loop cost data until it has completed an internal audit of its accounting practices and internal control processes for the years 2000 through 2002.¹¹

4. Generally, the Commission's rules may be waived for good cause shown.¹² As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.¹³ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.¹⁴ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.¹⁵ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.

III. DISCUSSION

5. We find that good cause exists to waive the July 31, 2003 loop cost data filing deadline contained in section 36.611 of the Commission's rules to allow Qwest additional time to compile these

⁶ USAC is responsible for collecting contributions to the various universal support mechanisms and disbursing universal service support funds. 47 C.F.R. § 54.702. *See also* 47 C.F.R. § 36.613.

⁷ *See* <http://www.fcc.gov/wcb/iatd/neca.html>.

⁸ *See* 47 C.F.R. § 54.709.

⁹ *See* 47 C.F.R. § 54.711.

¹⁰ *See* Qwest Petition at 1.

¹¹ *See id.* Qwest filed similar requests for waiver and extensions of time for its year 2002 Automated Reporting Management Information System (ARMIS) filings that were due on April 1, 2003 pursuant to 47 C.F.R. § 43.21. *See* Qwest Petition at 1, n. 1; Letter from R. William Johnston, Executive Director – Federal Regulatory Policy, Qwest, to Alan Freedman, Acting Chief, Industry Analysis and Technology Division, Federal Communications Commission, March 20, 2003. Qwest's requests for an initial extension and additional requests for further extensions were subsequently granted. *See* Letter from William F. Maher, Jr., Chief, Wireline Competition Bureau, FCC, to R. William Johnston, Executive Director – Federal Regulatory Policy, Qwest, March 31, 2003; Letter from Alan Feldman, Acting Chief, Industry Analysis and Technology Division, Federal Communications Commission to R. William Johnston, Executive Director – Federal Regulatory Policy, Qwest, July 18, 2003; Letter from Alan Feldman, Acting Chief, Industry Analysis and Technology Division, Federal Communications Commission to R. William Johnston, Executive Director – Federal Regulatory Policy, Qwest, August 18, 2003.

¹² 47 C.F.R. § 1.3.

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

¹⁴ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹⁵ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

data.¹⁶ Qwest has demonstrated that special circumstances warrant a deviation from the filing deadline provided in section 36.611 of the Commission's rules. Qwest is currently in the process of reviewing its accounting practices and internal control processes due the discovery of prior misapplications of, or changes in, its accounting policies.¹⁷ As a result, Qwest is awaiting completion of a financial statement audit and will be making restatement adjustments to its books of account for the years 2000 through 2002.¹⁸ Because Qwest's loop cost data is based upon such information, it could not file accurate loop cost data by the July 31, 2003 filing deadline. Upon completion of the financial restatement process, Qwest states that it will compile and file its loop cost data. We therefore find that Qwest has demonstrated special circumstances that justify a waiver of the section 36.611 filing deadline. In this instance, these special circumstances outweigh any administrative difficulties that NECA and USAC may face as a result of the late-filed loop cost data.

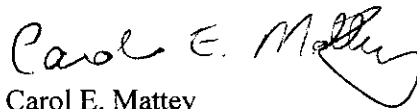
6. We also conclude that waiver of section 36.611 is consistent with the public interest. It is essential for loop cost data filed by carriers to be as accurate as possible. It would not serve the public interest to require Qwest to file its loop cost data now, when it is known these data will likely be restated. The use of inaccurate data could impact the integrity of NECA's universal service support calculations.

7. As a final matter, as requested, Qwest's section 36.611 loop cost data for 2002 shall be due on the same date it submits its 2002 ARMIS filings as directed by the Wireline Competition Bureau.¹⁹ Moreover, we instruct NECA to continue to use Qwest's loop cost data for 2001 for the calculations it will submit to the Commission and USAC on October 1, 2003. We also direct USAC to true up support amounts as necessary when Qwest files its loop cost data for 2002.

IV. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 5(c), 201, and 202 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 201, and 202, and sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 1.3, that the petition for waiver of section 36.611 of the Commission's rules, 47 C.F.R. § 36.611, filed by Qwest Communications on July 29, 2003, IS GRANTED, as described herein.

FEDERAL COMMUNICATIONS COMMISSION



Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

¹⁶ Despite its inability to file its loop cost data by July 31, 2003, we note that Qwest has made a timely filing of the number of working loops for each of its study areas and wire centers pursuant to section 36.611(h). This order, therefore, is limited in scope to Qwest's loop cost data.

¹⁷ See Qwest Petition at 2.

¹⁸ See *id.* at 1.

¹⁹ See *id.* at 2; *supra* note 11.